IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.A.ABDUL GAFOOR
&
THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 15TH JANUARY 2007 / 25TH PAUSHA 1928

R.C. Rev..No. 15 of 2007()

RCA.4/2005 of I ADDL. DISTRICT COURT, KOLLAM
RCP.16/2001 of ADDL. RENT CONTROL COURT, KOLLAM
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REVISION PETITIONER/APPELLANT/COUNTER PETITIONER

T.RADHAKRISHNAN, S/O.THIRUVENKATA REDDIAR, SHOP NO. MC 1466, 1467, NEAR KESAVA PILLAI SHOP, ANDAMUKKAM, KOLLAM-1.

BY ADV. SRI.P.PUSHPARAJAN
SRI.RAJA. P.R.S.

RESPONDENTS: PETITIONER
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1. V.R.RAMACHANDRAN PILLAI, S/O.RAMAN PILLAI, MEENAKSHI VILASOM, VADAKKEVILA, KOLLAM.

2. V.R.BHASKARA PILLAI, S/O.RAMAN PILLAI, MEENAKSHI VILASOM, VADAKKEVILA, KOLLAM.

BY ADV. SRI. AJAYAKUMAR G for R1

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 15/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.A. ABDUL GAFOOR & K.R. UDAYABHANU, JJ

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R.C. Rev. NO. 15 OF 2006

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Dated this the 15th day of January 2007

ORDER

Udayabhanu,J

The Revision Petitioner is the tenant who is under orders of eviction on the application of the landlord under section 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965 for the bona fide need for starting a business for the 1st respondent among the petitioners - landlords. The landlords are brothers and both of them filed the application for getting surrender of vacant possession of the premises in order to start a business for the 1st petitioner who is unemployed. The 1st petitioner has testified before the court. The courts below have found that the respondent could not adduce any evidence before the courts below to disbelieve the version of the 1st petitioner/landlord. The counsel for the Revision Petitioner has pointed out that the 1st petitioner was working abroad and that he has returned from abroad after about 10 years back and his sons are of well

employed. We find that the above is not a sufficient reason to reject the case set up under section 11(3). The fact that the sons are employed is not a reason to dismiss the claim of the landlord under section 11(3). So far as the protection of the second proviso to section 11(3) is concerned, the courts have noted that the Revision Petitioner/tenant has not produced any objective evidence to establish the fact that his sole means of livelihood is the income derived from the business conducted in the petition schedule shop room. The Revision Petitioner/tenant is conducting a provision shop therein. So far as to the non availability of the other rooms in the locality, suitable for running the business the only evidence is the oral testimony of the tenant. PW1 has testified that a number of rooms are available in the locality. The burden in this regard is on the tenant. In the circumstances, and in the absence of any positive evidence on the side of the Revision Petitioner to establish the fact that he is entitled to the benefit under second proviso to section 11(3) of the Act we find that the Revision Petitioner has failed to point out any blemish in the orders of the courts below.

2. In the circumstances, the revision petitioner is directed to vacate the premises within three months from today onwards on condition that he shall remit the entire arrears of rent due if any and continue to remit rent due in future and file an affidavit before the execution court within 20 days from today undertaking that he shall vacate the premises on or before 16.04.2007.

The R.C.R is dismissed in limine.

K.A. ABDUL GAFOOR, JUDGE

K.R. UDAYABHANU, JUDGE.

RV